



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF Z-S-, INC.

DATE: SEPT. 6, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a scientific instrumentation business, seeks to employ the Beneficiary as a service engineer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition finding that the Beneficiary does not have the requisite educational degree to qualify for the job offered under the terms of the labor certification and to qualify for classification as an advanced degree professional.

On appeal, the Petitioner asserts that the Director’s decision was erroneous and that the Beneficiary has the requisite educational credentials to meet the terms of the labor certification and to qualify for classification as an advanced degree professional.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

Under section 203(b)(2) of the Act immigrant classification may be granted to foreign nationals who hold advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1). The term “advanced degree” is defined in 8 C.F.R. § 204.5(k)(2) as follows:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.

The regulations at 8 C.F.R. § 204.5(k)(3)(i) state that a petition for an advanced degree professional must be accompanied by either:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

A beneficiary must also meet all of the education, training, experience, and other requirements specified on the labor certification as of the petition’s priority date.¹ *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977).

II. ANALYSIS

The labor certification in this case has the following specifications in section H regarding the education, training, and experience required for the job of service engineer:

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| 4. | Education: Minimum level required: | Bachelor’s degree |
| 4-B. | Major Field of Study: | Electrical Engineering |
| 5. | Is training required in the job opportunity? | No |
| 6. | Is experience in the job offered required? | Yes |
| 6-A. | How long? | 84 months |
| 7. | Is an alternate field of study acceptable? | Yes |
| 7-A. | What field of study? | Electronics Engineering |
| 8. | Is an alternate combination of education and experience acceptable? | No |
| 9. | Is a foreign educational equivalent acceptable? | Yes |
| 10. | Is experience in an alternate occupation acceptable? | No |

¹ The priority date of the petition is the date the underlying labor certification was filed with the DOL. *See* 8 C.F.R. § 204.5(d). In this case the priority date is August 14, 2014.

Thus, the labor certification states that minimum educational and experience requirements for the position of service engineer are a U.S. bachelor's degree in electrical or electronics engineering, or a foreign equivalent degree, followed by seven years of experience in the job offered.

Section J of the labor certification states that the Beneficiary's highest level of education relevant to the job offered is a bachelor's degree in electrical engineering from the [REDACTED] in [REDACTED] India, completed in 1985. As evidence of the Beneficiary's highest educational credential the Petitioner has submitted a copy of a "Certificate" from [REDACTED] (India) dated January 19, 1987, certifying that the Beneficiary "passed Sections A and B of the Institution Examinations in the Electrical Engineering Branch in Summer 1983 and Summer 1985 respectively," along with the Beneficiary's examination results from the [REDACTED] documenting the marks he received in the individual subject areas of the two examinations. In addition, the Petitioner has submitted documentation certifying that the Beneficiary was enrolled as a life associate member of the [REDACTED] in March 1990 and was authorized by the [REDACTED] in February 1994 to use the title [REDACTED] (India).

In denying the petition, the Director found that the Beneficiary's credentials from the [REDACTED] do not meet the regulatory requirement of a U.S. baccalaureate degree or a foreign equivalent degree to qualify for advanced degree professional classification because the [REDACTED] is not a degree-granting institution. The Director also found that the Beneficiary's [REDACTED] credentials did not meet the minimum educational requirements of the labor certification. At issue on appeal, therefore, is whether the Beneficiary has the requisite educational credential(s) to qualify for the requested classification and to comply with the terms of the labor certification and. For the reasons discussed below, we find that he does not.

A. Requirement for Classification as an Advanced Degree Professional

The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) states that a petition for an advanced degree professional must be accompanied by an official *academic* record showing that the Beneficiary has a U.S. baccalaureate *degree* or a foreign equivalent *degree*" (emphasis added). On appeal, the Petitioner refers to the educational evaluations submitted earlier in this proceeding² which evaluated the Beneficiary's passage of sections A and B of the [REDACTED] examination and subsequent associate membership in the [REDACTED] as equivalent, or comparable, to a bachelor's degree in electrical engineering from an accredited college or university in the United States. These evaluations, the Petitioner asserts, are consistent with the credential advice of the [REDACTED] ³ created by [REDACTED] ⁴ which states that the passage of sections A and B of the [REDACTED]

examination represents the attainment of a level of education comparable to a bachelor's degree in the United States. On appeal, the Petitioner also submits another evaluation of the Beneficiary's credentials by [REDACTED]. The evaluation states that a high school education is required for admission to the [REDACTED], which is a well-regarded institution of higher education in India. The evaluation further states that students who pass the [REDACTED] examination and become associate members of the [REDACTED] may continue their education at the master's degree level at accredited U.S. institutions and Indian universities. According to [REDACTED] therefore, the studies at [REDACTED] "are recognized as the same as studies completed at any other recognized academic institution. However, none of the evaluations claim that passage of the [REDACTED] examination and associate membership in the [REDACTED] is the same as a degree. The Beneficiary's "Certificate" from the [REDACTED] following passage of sections A and B of the [REDACTED] examination does not claim to be a degree. Nor does the Beneficiary's associate membership certificate from the [REDACTED] claim to be a degree. The [REDACTED] is not a college, university, or any other kind of degree-granting academic institution. While passage of the [REDACTED] examination, and associate membership in the [REDACTED] may be comparable to a U.S. baccalaureate or foreign equivalent degree for some purposes, these credentials do not constitute a foreign equivalent degree to a U.S. baccalaureate degree as required under section 203(b)(2) of the Act and applicable regulations to qualify the Beneficiary for classification as an advanced degree professional.

B. Minimum Educational Requirement of the Labor Certification

On appeal, the Petitioner also asserts that the Beneficiary's credentials from the [REDACTED] meet the alternative educational requirement at section H.9 of the labor certification because they are the foreign educational equivalent of a U.S. bachelor's degree in electrical engineering. The terms of the labor certification, however, do not permit an individual to qualify for the proffered position with anything other than a bachelor's (or higher) degree. In determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). Our interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834. Here, the labor certification requires a U.S. bachelor's degree or a foreign educational equivalent, which in this case is a foreign equivalent *degree*.⁵ As discussed above, the Beneficiary's certificates from the [REDACTED] certifying his passage of sections A and B of the [REDACTED] examination in electrical engineering and associate membership in the [REDACTED] do not constitute an educational *degree*. Therefore, the Beneficiary does not meet the minimum educational requirement of the labor certification.

⁵ If we were to interpret H.9 to allow for less than a U.S bachelor's or foreign equivalent degree, the labor certification would not support the requested advanced degree classification. *See* 8 C.F.R. §204.5(k)(4)(i)

III. CONCLUSION

The Petitioner has not established that the Beneficiary possesses a U.S. baccalaureate degree or a foreign equivalent degree, as required to qualify for classification as an advanced degree professional and to meet the minimum educational requirement of the labor certification.

ORDER: The appeal is dismissed.

Cite as *Matter of Z-S- Inc.*, ID# 1641408 (AAO Sept. 6, 2018)